
BZA-1713
LAFAYETTE BOTTLED GAS
Variance

STAFF REPORT
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REQUEST MADE, PROPOSED USE, LOCATION:

Petitioner, represented by Joe Bumbleburg of the Ball Law Firm, is seeking the following two setback variances for a liquid petroleum gas tank approved in a previous special exception request (BZA-1694):

1. To allow a 50' setback from the right-of-way line instead of the required 150'; and
 2. To allow a 50' setback from the east side property line instead of the 150' required;
- on proposed Lot 1 in Brand Minor Subdivision, located on the south side of Hoover Road where it dead ends at the railroad tracks near the unincorporated town of Montmorenci, Shelby 6(NW)23-5.

AREA ZONING PATTERNS:

The site was rezoned Agricultural (A) for this use in October of last year (Z-2261); a special exception was granted by the ABZA later that same month (BZA-1694). Surrounding land is zoned AA, Select Agricultural. A sliver of land between US 52 and Hoover Road (Oxford Street in Montmorenci) east of this site is zoned GB, General Business (Z-1702). Farther to the southeast approximately 600', lots on the south side of Oxford Street are zoned R1.

AREA LAND USE PATTERNS:

The site in question was originally one acre out of a larger farm field in crop production; petitioner acquired additional acreage from the landowner and attached a triangular shaped piece in order to comply with the required setback from the western property line. Adjacent to the east are grain storage bins, across the road and to the east is an old grain elevator and assorted buildings associated with that use. Hoover Road dead-ends in the middle of this lot's front property line, and the railroad tracks separate this site from US 52. Currently a landscape business located within the GB zone to the northeast uses the area immediately across Hoover Road and also the road itself, to store small piles of mulch and dirt. The County Highway Department also uses the area across the road in the winter to store sand and salt for county trucks, so that they can reload without having to drive back to the main county storage facility.

TRAFFIC AND TRANSPORTATION:

Hoover Road comes to a dead-end approximately in the middle of the proposed lot's frontage. Petitioner plans to access the property westbound on Hoover Road, loop around on the site, fill the company's trucks, then exit eastbound using a 20' off-site ingress-egress easement that leads back to Hoover Road.

ENVIRONMENTAL AND UTILITY CONSIDERATIONS:

Because no buildings or offices are planned for this site, no septic system is needed. No soil work was completed for the subdivision. In case future plans change or different property owners require a septic system, a covenant was required during the subdivision phase of this process, which stated: "No use requiring an individual sewage disposal system will be

permitted on this lot without the prior approval of the Tippecanoe County Health Department for the necessary on-site sewage disposal system. The Health Department approval must also be filed with the APC office for this file on this subdivision."

STAFF COMMENTS:

Petitioner originally approached staff well over a year ago about locating a petroleum tank in rural Tippecanoe County for a couple of reasons. The business felt it could better serve its customers and it wanted to relocate its existing tank currently situated in the City of Lafayette along Brady Lane to a more rural location. Petitioner spoke to staff members to receive the zoning requirements for this use and started the subdivision process to create a lot for the tank. Unfortunately, like a classic grounder missed by several players of a baseball team, APC staff missed the 150' setback requirement associated with this open use.

When the special exception was filed and the staff report written, a commitment was included stating that land would be attached to the perimeter of the site using Exemption E so that the tank would comply with the 150' setback and that the land would remain attached as long as the use operates from the site. Theoretically, the commitment seemed doable and there was enough adjacent farm ground to attach to the site to meet the requirements. However, petitioner was hesitant to fulfill the commitment because the UZO requirement is 100' more than the industry standard, which requires a 50' setback. Furthermore, the landowner raised concerns about the tank sitting so far off the road in the middle of the agricultural field because it would waste tillable ground.

At petitioner's request, staff researched other Indiana zoning ordinances to see how other jurisdictions treated this use. A multitude of counties were contacted and the very few that recognized this as a land use required a setback somewhere between 100 and 200 feet. Staff also looked at the industry standard and confirmed that a 50' setback is the requirement for a petroleum tank. With this information in hand, staff again looked at the current ordinance and its 150' setback requirement and the site in question. Staff was not in favor of seeking an ordinance amendment to reduce the required setback because it was felt that petitioner's site is unique and that another site chosen for this use could easily have different circumstances and would need the 150' setback.

Petitioner's site is unique because it is located at the end of a dead end road and is further separated from US 52 by a sliver of property and railroad tracks. In fact, the distance between the proposed location of the tank and the edge of US 52 is well over 150'. The characteristics of this site ensure that nothing will be built across the road on the sliver of property because there is simply not enough room and the portion of that tract that is developed is over 150' away. Seeking a variance from the front property line enables the tank to comply with the 150' requirement from the rear property line and preserves valuable farmland. To the east are existing agricultural buildings owned by the landowner and his preference was to decrease the amount of land between those buildings and the tank. A distance of 50' for separation between the tank and the non-residential storage bins appears adequate based on the industry's code. Staff feels that the industry standard of 50' would be minimum relief for both requests. Petitioner has secured an additional triangular shaped piece of ground, per the original commitment, which was attached to the western side of the property so that the tank could comply with the 150' setback requirement from that western side property line.

Staff believes that this site is unique enough to support these variances. Staff also feels that this site is ideal for this use as it accomplishes two goals: it relocates the current tank from Brady Lane to a more rural area nearer the customer base. The relocation manages to

establish the tank in a less populated area and to decrease the number of trucks visiting the current site in town. Although the required 150' setback was missed, staff has worked with petitioner, its representative and the landowner to find a solution that upholds the context of the ordinance.

Regarding the ballot items:

1. The Area Plan Commission determined at its April 19, 2006 meeting that the variances requested **ARE NOT** use variances.

And it is staff's opinion regarding both requests:

2. Granting these variances **WILL NOT** be injurious to the public health, safety, and general welfare of the community because the location is rural in nature and there is not enough room to construct buildings on the sliver of property north of the site between Hoover Road and US 52 and the buildings adjacent to the east are non-residential storage bins owned by the farmer who sold the land for this use. The tank will comply with 150' setback from two property lines and will meet the industry standard for the other two lines.
3. Use and value of the area adjacent to the property included in the variance requests **WILL NOT** be affected in a substantially adverse manner because nothing can be constructed on the sliver of property on the opposite side of Hoover Road and the remainder of that property is already developed as a commercial use with buildings over 150' away.
4. The terms of the zoning ordinance are being applied to a situation that **IS NOT** common to other properties in the same zoning district because the site is located at the end of a dead end road and is outside Montmorenci, with no adjacent residences.
5. Strict application of the terms of the zoning ordinance **WILL** result in an unusual or unnecessary hardship as defined in the zoning ordinance because the site can comply with the industry standard and can meet the UZO standard for two of the four required setbacks. Although it could be argued that this cannot be considered a hardship because the variances requested are the result of a land division, it is staff's error that would make this site unusable for the approved purpose.

Note: Questions 5a. and 5b. need only be answered if a hardship is found in Question 5 above.

5a. The hardship involved **IS NOT** self-imposed or solely based on a perceived reduction of or restriction on economic gain because the ordinance requires a larger setback than the industry that regulates stand-alone petroleum tanks and while staff feels that the 150' setback could be necessary in some locations, the site in question is very rural in nature and there are no residences nearby.

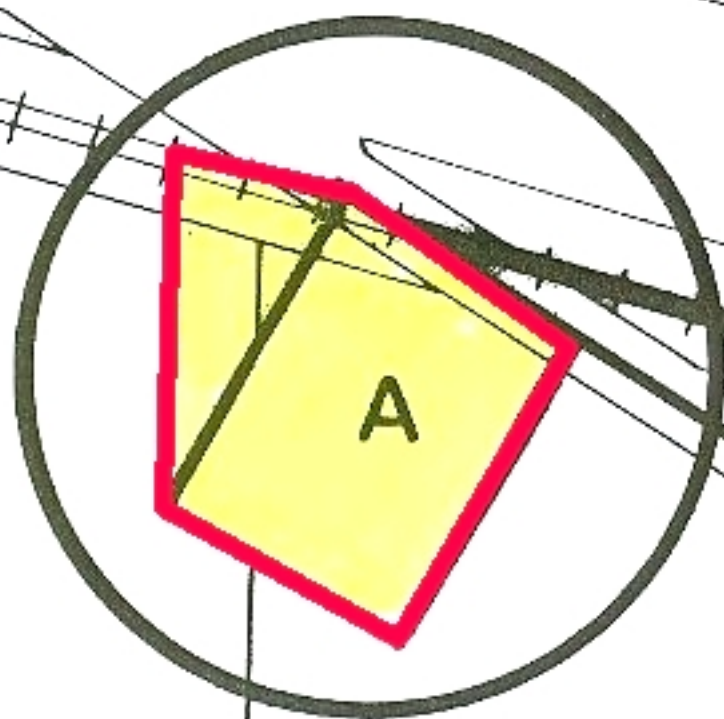
5b. The variance sought **DOES** provide only the minimum relief needed to alleviate the hardship because minimum relief in this case is the industry standard of 50'.

STAFF RECOMMENDATION:

Variance #1 – Approval

Variance #2 – Approval

AA



US 52

VAC W22

Hoover St

AA

